

1 **ALLAN B. DIAMOND, ESQ.**
Diamond McCarthy LLP
2 909 Fannin, 15th Floor
Houston, TX 77010
3 Telephone: 713-333-5100
4 Facsimile: 713-333-5199
Chapter 11 Trustee for Howrey LLP

5
6 **DIAMOND MCCARTHY LLP**
Howard D. Ressler
Jason M. Rudd
7 Stephen T. Loden
8 909 Fannin, 15th Floor
Houston, TX 77010
9 Telephone: 713-333-5100
Facsimile: 713-333-5199
10 *Proposed Counsel for Allan B. Diamond,*
11 *Chapter 11 Trustee for Howrey LLP*

12 **KORNFIELD, NYBERG, BENDES & KUHNER, P.C.**
Eric A. Nyberg, Esq. (Bar No. 131105)
13 Chris D. Kuhner, Esq. (Bar No. 173291)
14 1970 Broadway, Suite 225
Oakland, CA 94612
15 Telephone: 510-763-1000
Facsimile: 510-273-8669
16 *Proposed Local Counsel for Allan B. Diamond,*
17 *Chapter 11 Trustee for Howrey LLP*

18 UNITED STATES BANKRUPTCY COURT
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA
20

21 In re
22 HOWREY LLP,
23 Debtor.
24
25
26

Case No. 11-31376 DM

Chapter 11

**CHAPTER 11 TRUSTEE'S
PRELIMINARY LIMITED
OBJECTION TO FINAL
APPLICATIONS FOR
COMPENSATION BY PRE-
TRUSTEE ESTATE
PROFESSIONALS**

Date: November 29, 2011
Time: 9:30 a.m.
Cttrm: 22nd Floor
U.S. Bankruptcy Court
235 Pine Street
San Francisco, CA 94104

Allan B. Diamond, chapter 11 trustee for the estate of Howrey LLP (the "Trustee"), files this Preliminary Limited Objection to Final Applications For Compensation By Pre-Trustee Estate Professionals (the "Preliminary Limited Objection") and, in support thereof, respectfully represents as follows:

BACKGROUND

1. On April 11, 2011 (the "Commencement Date"), a chapter 7 involuntary petition was filed against Howrey LLP by L.A. Best Photocopies, Inc., Kent Daniels and Associates, Inc., and Advanced Discovery LLC.

2. On June 6, 2011, Howrey LLP (the "Debtor") filed its *Ex Parte Consent to Entry of Order for Relief and Motion to Convert Debtor's Case to Chapter 11* and the Court entered its *Order for Relief and Converting Case to One Under Chapter 11* (the "Order for Relief") on the same date.

3. Following entry of the Order for Relief, the Debtor operated its business and managed its assets as a debtor in possession.

4. On September 15, 2011, Citibank, N.A. ("Citibank") filed its *Motion for Entry of an Order Converting the Debtor's Chapter 11 Case to a Case Under Chapter 7 of the Bankruptcy Code, or, In the Alternative, Appointing a Chapter 11 Trustee* (the "Motion to Appoint Trustee").

5. On September 22, 2011, the Court entered its *Order Approving Citibank, N.A.'s Motion to Appoint a Chapter 11 Trustee* (the "Trustee Order"). The Trustee Order directed the

1 Debtor's pre-Trustee estate professionals to file final applications for compensation and
2 reimbursement of expenses within 30 days after appointment and qualification of the Trustee.

3 6. On October 7, 2011, the United States Trustee for the Northern District of
4 California (the "U.S. Trustee") appointed the Trustee as the chapter 11 trustee for the estate of
5 Howrey LLP, which appointment was approved by an order of this Court dated October 12, 2011
6 (the "Trustee Appointment Date"). Thereafter, the Trustee satisfied all of the conditions set forth
7 in Bankruptcy Code § 322, and the Trustee is now serving as chapter 11 Trustee for the Debtor's
8 chapter 11 estate pursuant to § 1104 of the Bankruptcy Code.

10 7. On October 25, 2011, Wiley Ryan LLP, Murray & Murray, P.C., Protiviti Inc.,
11 the Burdge Law Firm PC, and Salter & Company, LLC each filed final fee applications
12 (collectively, the "October 25 Fee Applications"). On October 31, 2011, Felderstein Fitzgerald
13 Willoughby & Pascuzzi LLP filed its final fee application (the "October 31 Fee Application")
14 and, collectively with the October 25 Fee Applications, the "Final Fee Applications"). The Final
15 Fee Applications seek final approval of \$3,116,663.00 in fees and reimbursement of \$141,307.92
16 in expenses incurred by the estate's pre-Trustee estate professionals.

18 JURISDICTION

19 8. This Court has subject matter jurisdiction to consider and determine this matter
20 pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue
21 is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

23 RELIEF REQUESTED

24 9. The Trustee seeks an adjournment of the Final Fee Applications until such time as
25 he has had an opportunity to fully analyze the events leading to his appointment, and until it
26 becomes evident that there are sufficient assets in this estate to satisfy all administrative expense

1 claims in full. Until these conditions are satisfied, it is respectfully submitted that it would be
2 both premature and potentially detrimental to this estate to allow final compensation to the pre-
3 Trustee estate professionals. For all these reasons, and as discussed in more detail below, the
4 Trustee requests an adjournment of consideration of the Final Fee Applications until the earlier
5 of (i) the date on which it becomes evident that this estate is administratively solvent, or (ii) the
6 confirmation of a liquidating plan.
7

8 *The Trustee Has Had Insufficient Time To Analyze The Final Fee Applications*

9 10. The Trustee was appointed one month ago, and qualified to serve as Trustee
10 approximately three weeks ago. Since then, his time has been devoted to familiarizing himself
11 with the Debtor's operations, obtaining additional cash collateral authority, and identifying high
12 priority tasks that must be addressed immediately. While it will obviously take additional time
13 to complete these tasks, since his appointment the Trustee has, among other things:
14

- 15 • Regularly met with Citibank, N.A. to obtain additional cash collateral authority to
16 continue the Debtor's wind down operations;
- 17 • Met with the Debtor's remaining attorneys and staff, developed a plan for an
18 orderly reduction in staff in the future and began implementation of such plan;
- 19 • Negotiated and engaged consulting specialists to collect the Debtor's remaining
20 accounts receivable;
- 21 • Identified issues arising from the need to dispose of over 300,000 boxes of client
22 files stored in multiple locations across the country;
- 23 • Addressed electronic data storage issues and reduction of associated costs
24 involving the U.S. and European data centers;
- 25 • Conducted a preliminary analysis of the Debtor's contingency fee cases that have
26 not been transitioned to other law firms;
- Conducted multiple meetings with representatives of the Creditors' Committee;
- Met with the Debtor's dissolution committee, and financial advisors for the
Debtor, Creditors' Committee and Citibank, Protiviti, Development Specialists
Inc and Gulf Atlantic, respectively, to get up to speed on the Debtor's operations
and accounting systems;

- Analyzed issues related to the wind down of the Debtor's foreign operations;
- Identified issues related to termination of the Debtor's professional liability insurance; and
- Identified issues and engaged in discussions/meetings with representatives of the Debtor's landlord.

In addition to these tasks, the Trustee interviewed local law firms that might serve as local counsel and met with other constituencies, including counsel to landlord administrative claimants, to introduce himself and better understand the interests of the various parties in interest in this case.

11. Simply stated, neither the Trustee nor his staff has had time since the Final Fee Applications were filed to analyze the reasonableness of the fees and expenses charged and the benefits conferred by the pre-Trustee estate professionals. Moreover, were the Court to grant the Final Fee Applications, the ability of the Trustee to bring claims against the pre-Trustee estate professionals might be compromised.¹ For that reason alone, it is submitted that it would be premature to allow final compensation to the pre-Trustee professionals at this juncture.

No Administrative Claim Should Be Finally Paid In Full Until It Is Shown That The Estate Is Administratively Solvent

12. It would be premature to allow one class of administrative expense claims to receive full and final payment on their claims before it becomes evident that there are, or will be, sufficient assets in this estate to accord the same treatment to all administrative expense claims. The estate presently holds approximately \$3 million in cash, and faces administrative expense claims in excess of \$10 million over and above the amounts sought in the Final Fee Applications.

¹ To be clear, the Trustee is not presently aware of any claims against the pre-Trustee estate professionals, and he has no present intention to bring such claims. Nevertheless, it is possible that such claims may exist, and thus, it would be premature to allow the Final Fee Applications until such potential claims have been fully analyzed.

1 While those other administrative expense claims may be in dispute,² if allowed, they would be
2 entitled to the same priority as any other claims allowed under Bankruptcy Code § 503(b),
3 including claims for professional fees. See 11 U.S.C. § 1123(a)(4) (providing for the same
4 treatment for each claim or interest of a particular class in a plan.). In that event, there are
5 currently insufficient assets to satisfy all of those administrative expense claims in full.
6


7 13. While the Trustee is relatively certain that there will ultimately be sufficient estate
8 assets to satisfy all administrative claims in full, that result cannot be obtained until the
9 remainder of the Debtor's assets are liquidated, accounts receivable collection efforts are
10 substantially concluded, and the Debtor's litigation assets are adjudicated or resolved. In the
11 short time since his appointment, the Trustee has been diligently getting up to speed and
12 developing a strategy to generate the largest possible estate for satisfaction of all claims,
13 including those of the Debtor's pre-Trustee estate professionals, and the Trustee believes that he
14 will be ultimately successful in achieving that result. Nevertheless, until that result is obtained, it
15 would be premature to allow full and final compensation to the pre-Trustee estate professionals
16 to the possible detriment and prejudice of other administrative creditors.
17

18 CONCLUSION

19 14. For the reasons stated, it is respectfully submitted that it would be premature to
20 consider allowing full and final payment of the pre-Trustee professional's administrative expense
21 claims. The Trustee thus seeks entry of an order adjourning consideration of the Final Fee
22 Applications until the earlier of (i) the date on which it becomes evident that this estate is
23 administratively solvent, or (ii) the confirmation of a liquidating plan.
24

25 ² The Debtor's principal landlord, Warner Investments, L.P., asserts administrative claims in excess of \$10
26 million, and the Trustee has just begun the process of analyzing the legal and factual issues surrounding

1 Dated: November 15, 2011

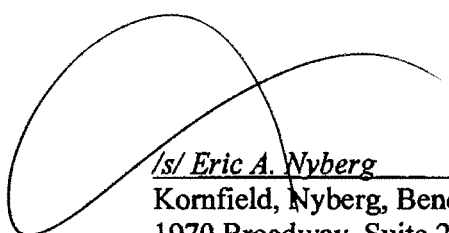
2 
3 Allan B. Diamond
4 DIAMOND MCCARTHY LLP
5 909 Fannin, 15th Floor
6 Houston, Texas 77010
7 Telephone: (713) 333-5100
8 Facsimile: (713) 333-5199

9 *Chapter 11 Trustee for Howrey LLP*

10 Howard D. Ressler
11 Jason M. Rudd
12 Stephen T. Loden
13 DIAMOND MCCARTHY LLP
14 909 Fannin, 15th Floor
15 Houston, TX 77010
16 Telephone: (713) 333-5100
17 Facsimile: (713) 333-5199

18 *Proposed Counsel for Allan B. Diamond, Chapter*
19 *11 Trustee for Howrey LLP*

20 Dated: November 15, 2011

21 
22 /s/ Eric A. Nyberg
23 Kornfield, Nyberg, Bendes & Kuhner, P.C.
24 1970 Broadway, Suite 225
25 Oakland, CA 94612
26 Telephone: (510) 763-1000
Facsimile: (510) 273-8669

Proposed Local Counsel for Allan B. Diamond,
Chapter 11 Trustee for Howrey LLP

this landlord claim.

DECLARATION OF SERVICE

I, the undersigned, declare:

I am employed in the City of Oakland, County of Alameda, California. I am over the age of 18 years and not a party to this action. My business address is 1970 Broadway, Suite 225, Oakland, California 94612.

On November 15, 2011, I served the following documents:

CHAPTER 11 TRUSTEE'S PRELIMINARY LIMITED OBJECTION TO FINAL APPLICATIONS FOR COMPENSATION BY PRE-TRUSTEE ESTATE PROFESSIONALS

on the following parties, as listed below:

1 Donna S. Tamanaha
Office of the U.S. Trustee
2 235 Pine St. 7th Fl.
San Francisco, CA 94104

3 Oracle America, Inc.
4 c/o Shawn M. Christianson
Buchalter Nemer A PC
5 *Email: schristianson@buchalter.com*

6 Ronald Rowland Agent for EMC Corp.
7 c/o Receivable Management Services
307 International Circle, Suite 270
8 Hunt Valley, MD 21030

9 Banc of America Leasing & Capital LLC
c/o Mark A. Serlin
10 Serlin & Whiteford
Email: mserlin@globelaw.com

11 U.S. Bank National Association, as Trustee
12 c/o David Gold
Perkins Coie LLP
13 *Email: dgold@perkinscoie.com*

14 Ballard Spahr LLP
15 Attn: Matthew Moncur
Email: moncurm@ballardspahr.com

16 Gregg S. Kleiner
17 Luce Forward
Email: gkleiner@luce.com

18 EMC Corporation
19 c/o RMS Bankruptcy Recovery Services
20 Attn: President or General/Managing Agent
P.O. Box 5126
21 Timonium MD 21094-5126

22 Advanced Discovery LLC
23 Attn: Chad Hoffman
550 Kearny St., Suite 320
24 San Francisco, CA 94108

25 John H. MacConaghy
Monique Jewett-Brewster
26 MacConaghy & Barnier, PLC
Email: macclaw@macbarlaw.com

IKON Office Services
Attn: Olivia Moody
Recovery & Bankruptcy Group
3920 Arkwright Road, Suite 400
Macon, GA 31210

Knickerbocker Properties, Inc. XXXIII
c/o Scott H. Olson
c/o Thomas J. Masenga
Seyfarth Shaw LLP
Email: solson@seyfarth.com
Email: tmasenga@seyfarth.com

Pension Benefit Guaranty Corporation
c/o Lawrence Landgraff
Allen Matkins Leck Gamble et al.
Email: Landgraff.larry@pbgc.gov
Email: efile@pbgc.gov

Attorney's Liability Assurance Society
c/o Alan D. Smith
Perkins Coie LLP
Email: adsmith@perkinscoie.com

The Irvine Company LLC
c/o Michael S. Greger
c/o Ivan M. Gold
William W. Huckins
Allen Matkins Leck Gamble et al.
Email: mgreger@allenmatkins.com
Email: igold@allenmatkins.com
Email: whuckins@allenmatkins.com

Kent Daniels and Associates, Inc.
Attn: Mark O'Brien
Email: mobrien@obrienlawcorp.com

Ricoh Business Solutions
Attn: Shaundolyn Robertson
3920 Arkwright Road, Suite 400
Macon, GA 31210

S. Christian Mullgardt
Senior Counsel
Olin Corporation
190 Carondelet Plaza, Suite 1530
Clayton, MO 63105
Email: scmullgardt@olin.com

1 Email: *mjewett-brewster@macbarlaw.com*

2 The following is the procedure in which service of this document(s) was effected:

3 X **By Mail:** I caused such envelope to be deposited in the mail at Oakland, California with
4 postage thereon fully prepaid in the designated area for outgoing mail in accordance
5 with this office's practice, whereby mail is deposited in a U.S. mailbox in Alameda
6 County at the close of the business day.

7 **By Facsimile:** I caused a copy of the above named documents to be transmitted via-
8 facsimile to the facsimile number of the offices of the addressee(s) as indicated above.

9 **By Overnight Delivery:** I caused such envelope to be transmitted by a overnight delivery
10 service (i.e., Federal Express, UPS) to the offices of the addresses(s).

11 **By Personal Service:** I caused such envelope to be hand delivered to the offices of the
12 addressee(s) as indicated above.

13 X **By Email:** By emailing said document to the persons listed above, to their email
14 addresses also listed above, in Adobe Acrobat, Word, or WordPerfect.

15 I declare under penalty of perjury that the foregoing is true and correct. Executed this 15
16 day of November, 2011 at Oakland, California.

17 /s/ Gail A. Michael 

Bradford F. Englander, Esq.
Whiteford, Taylor and Preston, LLP
3190 Fairview Park Drive, #300
Falls Church, VA 22042

H. Jason Gold
Wiley Rein LLP
1776 K Strett, N.W.
Washington, DC 20006

Jenny L. Fountain
Murray & Murray, A Professional Corp.
19400 Stevens Creek Blvd. #200
Cupertino, CA 95014

Robert A. Franklin
Murray & Murray, A Professional Corp.
19400 Stevens Creek Bl. #200
Cupertino, CA 95014-2548

Geoffrey A. Heaton
Duane Morris LLP
1 Market, Spear Tower #2200
San Francisco, CA 94105-1127

James P. Hollihan
Duane Morris LLP
600 Grant St. #5010
Pittsburgh, PA 15219-2802

Eve I. Klein
Law Offices of Duane Morris
1540 Broadway
New York, NY 10026-4086

Alexander M. Laughlin
Wiley Rein LLP
7925 Jones Branch Dr.
McLean, VA 22102

Valerie P. Morrison
Wiley Rein LLP
7925 Jones Branch Dr. #6200
McLean, VA 22102

Aron M. Oliner
Law Offices of Duane Morris
1 Market Spear Tower #2200
San Francisco, CA 94105-3104

Kimberly A. Posin
Law Offices of Latham and Watkins
355 South Grand Avenue, # 100
Los Angeles, CA 90071-1560

Craig M. Prim
Murray & Murray, A Professional Corp.
19400 Stevens Creek Blvd #200
Cupertino, CA 95014-2548

Dylan G. Trache
Wiley Rein LLP
7925 Jones Branch Dr. #6200
McLean, VA 22102

Joel M. Walker
Duane Morris LLP
600 Grant St. #5010
Pittsburgh, PA 15219-2802

Kyle Everett
Development Specialists, Inc.
235 Pine Street, Suite 1150
San Francisco, CA 94104

George E. Shoup, III
Development Specialists, inc.
6375 Riverside Drive, Suite 200
Dublin, OH 43017-5373

Thomas A. Willoughby
Felderstein, Fitzgerald et al
400 Capitol Mall #1450
Sacramento, CA 95814-4434

Salter & Company LLC
4600 East-West Highway, Suite 300
Bethesda, MD 20814

Richard Burdge
The Burdge Law Firm PC
500 S Grand Ave Ste 1500
Los Angeles, CA 90071

Guy Davis
Protiviti Inc.
1051 East Cary Street, Suite 602
Richmond, VA 23219

Kelley A. Cornish
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019

Lawrence Peitzman
Peitzman, Weg and Kempinsky
2029 Century Park E #3100
Los Angeles, CA 90067